IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7693 of 2007(B)

(CRIME NO. 239/2007 OF KIDANGOOR POLICE STATION)
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PETITIONER/ ACCUSED:

BABU, AGED 35 YEARS, S/O.CHACKO,
CHEERAMPAYIL HOUSE, KIDANGOOR SOUTH, KIDANGOOR.

BY ADV. SRI.P.K.SHAJU,
ADV. SHAJI JOSEPH.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7693 of 2007

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Dated this the 13th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered for offences punishable under Sections 308 and 326 I.P.C. The crux of the allegations against the petitioner is that he had assaulted the defacto complainant, an autorikshaw driver, in whose autorikshaw the petitioner had travelled and about the fare payable for which ride there was a dispute between the petitioner and the defacto complainant. The defacto complainant was allegedly attacked with a stone. He suffered fracture of left perital bone as a result of the attack. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. False allegations have been raised against the petitioner. He is a Government servant. He may be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. He submits that there are no circumstances whatsoever warranting or justifying the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. in favour of the petitioner. The learned Prosecutor has placed before me the case diary. I have peruse the same.

4. At this early stage of investigation I shall not embark on any detailed discussion on merit about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that on an anxious consideration of all other relevant circumstances, I am unable to perceive any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This, I agree with the learned Prosecutor, is a fit case where the petitioner must be directed to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior

notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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